

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the First Amended  
Accusation Against:**

**BENJAMIN STUART WILBUR, M.D.**

**Case No. 800-2015-016182**

**Physician's and Surgeon's  
Certificate No. A 92956**

**Respondent**

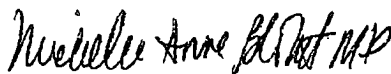
**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 8, 2017.

IT IS SO ORDERED: August 11, 2017.

**MEDICAL BOARD OF CALIFORNIA**



**Michelle Anne Bholat, M.D., Chair  
Panel B**

1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
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8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation  
12 Against:

13 **BENJAMIN STUART WILBUR, M.D.**  
14 **12672 Limonite Ave Ste 3E-235**  
**Corona, CA 92880-4201**

15 **Physician's and Surgeon's Certificate No.**  
16 **A92956,**

17 Respondent.

Case No. 800-2015-016182

OAH No. 2016061186

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

18  
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
23 of California (Board). She brought this action solely in her official capacity and is represented in  
24 this matter by Xavier Becerra, Attorney General of the State of California, by Wendy Widlus,  
25 Deputy Attorney General.

26 2. Respondent Benjamin Stuart Wilbur, M.D. (Respondent) is represented in this  
27 proceeding by attorney Samuel F. Trussell, whose address is: 77-564 Country Club Drive Suite  
28 150, Palm Desert CA.

3. On or about September 30, 2005, the Board issued Physician's and Surgeon's Certificate No. A92956 to Benjamin Stuart Wilbur, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2015-016182, and will expire on May 31, 2017, unless renewed.

## JURISDICTION

4. First Amended Accusation No. 800-2015-016182 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on February 15, 2017. Respondent timely filed his Notice of Defense contesting the First Amended Accusation.

5. A copy of First Amended Accusation No. 800-2015-016182 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2015-016182. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in First Amended Accusation No. 800-2015-016182.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

#### CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

#### DISCIPLINARY ORDER

**IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. A92956 issued to Respondent Benjamin Stuart Wilbur, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions.

1. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the practice of medicine for one year beginning the effective date of this decision.

2. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 180 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical

1 competence assessment program approved in advance by the Board or its designee. Respondent  
2 shall successfully complete the program not later than six (6) months after Respondent's initial  
3 enrollment unless the Board or its designee agrees in writing to an extension of that time.

4 The program shall consist of a comprehensive assessment of Respondent's physical and  
5 mental health and the six general domains of clinical competence as defined by the Accreditation  
6 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to  
7 Respondent's current or intended area of practice. The program shall take into account data  
8 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),  
9 Accusation(s), and any other information that the Board or its designee deems relevant. The  
10 program shall require Respondent's on-site participation for a minimum of three (3) and no more  
11 than five (5) days as determined by the program for the assessment and clinical education  
12 evaluation. Respondent shall pay all expenses associated with the clinical competence  
13 assessment program.

14 At the end of the evaluation, the program will submit a report to the Board or its designee  
15 which unequivocally states whether the Respondent has demonstrated the ability to practice  
16 safely and independently. Based on Respondent's performance on the clinical competence  
17 assessment, the program will advise the Board or its designee of its recommendation(s) for the  
18 scope and length of any additional educational or clinical training, evaluation or treatment for any  
19 medical condition or psychological condition, or anything else affecting Respondent's practice of  
20 medicine. Respondent shall comply with the program's recommendations.

21 Determination as to whether Respondent successfully completed the clinical competence  
22 assessment program is solely within the program's jurisdiction.

23 If Respondent fails to enroll, participate in, or successfully complete the clinical  
24 competence assessment program within the designated time period, Respondent shall receive a  
25 notification from the Board or its designee to cease the practice of medicine within three (3)  
26 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
27 until enrollment or participation in the outstanding portions of the clinical competence assessment  
28 program have been completed. If the Respondent did not successfully complete the clinical

1 competence assessment program, the Respondent shall not resume the practice of medicine until a  
2 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
3 cessation of practice shall not apply to the reduction of the probationary time period.

4 Within 60 days after Respondent has successfully completed the clinical competence  
5 assessment program, Respondent shall participate in a professional enhancement program  
6 approved in advance by the Board or its designee, which shall include quarterly chart review,  
7 semi-annual practice assessment, and semi-annual review of professional growth and education.  
8 Respondent shall participate in the professional enhancement program at Respondent's expense  
9 during the term of probation, or until the Board or its designee determines that further  
10 participation is no longer necessary.

11 Respondent must successfully complete the clinical competence assessment program prior  
12 to resuming the practice of medicine.

13 3. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent  
14 shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as  
15 defined in the California Uniform Controlled Substances Act.

16 Respondent shall not issue an oral or written recommendation or approval to a patient or a  
17 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical  
18 purposes of the patient within the meaning of Health and Safety Code section 11362.5.

19 If Respondent forms the medical opinion, after an appropriate prior examination and a  
20 medical indication, that a patient's medical condition may benefit from the use of marijuana,  
21 Respondent shall so inform the patient and shall refer the patient to another physician who,  
22 following an appropriate prior examination and a medical indication, may independently issue a  
23 medically appropriate recommendation or approval for the possession or cultivation of marijuana  
24 for the personal medical purposes of the patient within the meaning of Health and Safety Code  
25 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary  
26 caregiver that Respondent is prohibited from issuing a recommendation or approval for the  
27 possession or cultivation of marijuana for the personal medical purposes of the patient and that  
28 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally

1 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall  
2 fully document in the patient's chart that the patient or the patient's primary caregiver was so  
3 informed. Nothing in this condition prohibits Respondent from providing the patient or the  
4 patient's primary caregiver information about the possible medical benefits resulting from the use  
5 of marijuana.

6 4. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT.

7 Respondent is prohibited from practicing medicine until Respondent provides documentary proof  
8 to the Board or its designee that Respondent's DEA permit has been surrendered to the Drug  
9 Enforcement Administration for cancellation, together with any state prescription forms and all  
10 controlled substances order forms. Thereafter, Respondent shall not reapply for a new DEA  
11 permit without the prior written consent of the Board or its designee.

12 5. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within

13 thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis  
14 thereafter as may be required by the Board or its designee, Respondent shall undergo and  
15 complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a  
16 Board-appointed board certified physician and surgeon. The examiner shall consider any  
17 information provided by the Board or its designee and any other information he or she deems  
18 relevant, and shall furnish a written evaluation report to the Board or its designee.

19 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon  
20 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of  
21 physicians and surgeons with substance abuse disorders, and is approved by the Board or its  
22 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable  
23 professional standards for conducting substance abuse clinical diagnostic evaluations. The  
24 evaluator shall not have a current or former financial, personal, or business relationship with  
25 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and  
26 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the  
27 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a  
28 threat to himself or herself or others, and recommendations for substance abuse treatment,

1 practice restrictions, or other recommendations related to Respondent's rehabilitation and ability  
2 to practice safely. If the evaluator determines during the evaluation process that Respondent is a  
3 threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24)  
4 hours of such a determination.

5 In formulating his or her opinion as to whether Respondent is safe to return to either part-  
6 time or full-time practice and what restrictions or recommendations should be imposed, including  
7 participation in an inpatient or outpatient treatment program, the evaluator shall consider the  
8 following factors: Respondent's license type; Respondent's history; Respondent's documented  
9 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);  
10 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical  
11 history and current medical condition; the nature, duration and severity of Respondent's  
12 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or  
13 the public.

14 For all clinical diagnostic evaluations, a final written report shall be provided to the Board  
15 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator  
16 requests additional information or time to complete the evaluation and report, an extension may  
17 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally  
18 assigned the matter.

19 The Board shall review the clinical diagnostic evaluation report within five (5) business  
20 days of receipt to determine whether Respondent is safe to return to either part-time or full-time  
21 practice and what restrictions or recommendations shall be imposed on Respondent based on the  
22 recommendations made by the evaluator. Respondent shall not be returned to practice until he or  
23 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating  
24 that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited  
25 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of  
26 Regulations.

27 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall  
28 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic



1 evaluation, including any and all testing deemed necessary by the examiner, the Board or its  
2 designee, shall be borne by the licensee.

3 Respondent shall not engage in the practice of medicine until notified by the Board or its  
4 designee that he or she is fit to practice medicine safely. The period of time that Respondent is  
5 not practicing medicine shall not be counted toward completion of the term of probation.

6 Respondent shall undergo biological fluid testing as required in this Decision at least two (2)  
7 times per week while awaiting the notification from the Board if he or she is fit to practice  
8 medicine safely.

9 Respondent shall comply with all restrictions or conditions recommended by the examiner  
10 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified  
11 by the Board or its designee.

12 6. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent  
13 shall abstain completely from the personal use or possession of controlled substances as defined  
14 in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business  
15 and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does  
16 not apply to medications lawfully prescribed to Respondent by another practitioner for a bona  
17 fide illness or condition.

18 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent  
19 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone  
20 number; medication name, strength, and quantity; and issuing pharmacy name, address, and  
21 telephone number.

22 7. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain  
23 completely from the use of products or beverages containing alcohol.

24 8. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit  
25 to biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
26 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
27 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall  
28 make daily contact with the Board or its designee to determine whether biological fluid testing is

1 required. Respondent shall be tested on the date of the notification as directed by the Board or its  
2 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at  
3 any time, including weekends and holidays. Except when testing on a specific date as ordered by  
4 the Board or its designee, the scheduling of biological fluid testing shall be done on a random  
5 basis. The cost of biological fluid testing shall be borne by the Respondent.

6 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
7 During the second year of probation and for the duration of the probationary term, up to five (5)  
8 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
9 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing  
10 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number  
11 of random tests to the first-year level of frequency for any reason.

12 Prior to practicing medicine, Respondent shall contract with a laboratory or service,  
13 approved in advance by the Board or its designee, that will conduct random, unannounced,  
14 observed, biological fluid testing and meets all of the following standards:

15 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry  
16 Association or have completed the training required to serve as a collector for the United  
17 States Department of Transportation.

18 (b) Its specimen collectors conform to the current United States Department of  
19 Transportation Specimen Collection Guidelines.

20 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published  
21 by the United States Department of Transportation without regard to the type of test  
22 administered.

23 (d) Its specimen collectors observe the collection of testing specimens.

24 (e) Its laboratories are certified and accredited by the United States Department of Health  
25 and Human Services.

26 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day  
27 of receipt and all specimens collected shall be handled pursuant to chain of custody  
28 procedures. The laboratory shall process and analyze the specimens and provide legally

1 defensible test results to the Board within seven (7) business days of receipt of the  
2 specimen. The Board will be notified of non-negative results within one (1) business day  
3 and will be notified of negative test results within seven (7) business days.

4 (g) Its testing locations possess all the materials, equipment, and technical expertise  
5 necessary in order to test Respondent on any day of the week.

6 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens  
7 for the detection of alcohol and illegal and controlled substances.

8 (i) It maintains testing sites located throughout California.

9 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line  
10 computer database that allows the Respondent to check in daily for testing.

11 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff  
12 access to drug test results and compliance reporting information that is available 24 hours a  
13 day.

14 (l) It employs or contracts with toxicologists that are licensed physicians and have  
15 knowledge of substance abuse disorders and the appropriate medical training to interpret  
16 and evaluate laboratory biological fluid test results, medical histories, and any other  
17 information relevant to biomedical information.

18 (m) It will not consider a toxicology screen to be negative if a positive result is obtained  
19 while practicing, even if the Respondent holds a valid prescription for the substance.

20 Prior to changing testing locations for any reason, including during vacation or other travel,  
21 alternative testing locations must be approved by the Board and meet the requirements above.

22 The contract shall require that the laboratory directly notify the Board or its designee of  
23 non-negative results within one (1) business day and negative test results within seven (7)  
24 business days of the results becoming available. Respondent shall maintain this laboratory or  
25 service contract during the period of probation.

26 A certified copy of any laboratory test result may be received in evidence in any  
27 proceedings between the Board and Respondent.

28 If a biological fluid test result indicates Respondent has used, consumed, ingested, or

1 administered to himself or herself a prohibited substance, the Board shall order Respondent to  
2 cease practice and instruct Respondent to leave any place of work where Respondent is practicing  
3 medicine or providing medical services. The Board shall immediately notify all of Respondent's  
4 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or  
5 provide medical services while the cease-practice order is in effect.

6 A biological fluid test will not be considered negative if a positive result is obtained while  
7 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited  
8 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

9 After the issuance of a cease-practice order, the Board shall determine whether the positive  
10 biological fluid test is in fact evidence of prohibited substance use by consulting with the  
11 specimen collector and the laboratory, communicating with the licensee, his or her treating  
12 physician(s), other health care provider, or group facilitator, as applicable.

13 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the  
14 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

15 For purposes of this condition, the term "prohibited substance" means an illegal drug, a  
16 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by  
17 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been  
18 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

19 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited  
20 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the  
21 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to  
22 any other terms or conditions the Board determines are necessary for public protection or to  
23 enhance Respondent's rehabilitation.

24 9. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE.

25 Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to  
26 the Board or its designee for prior approval as a worksite monitor, the name and qualifications of  
27 one or more licensed physician and surgeon, other licensed health care professional if no  
28 physician and surgeon is available, or, as approved by the Board or its designee, a person in a

1 position of authority who is capable of monitoring the Respondent at work.

2 The worksite monitor shall not have a current or former financial, personal, or familial  
3 relationship with Respondent, or any other relationship that could reasonably be expected to  
4 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its  
5 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite  
6 monitor, this requirement may be waived by the Board or its designee, however, under no  
7 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

8 The worksite monitor shall have an active unrestricted license with no disciplinary action  
9 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms  
10 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth  
11 by the Board or its designee.

12 Respondent shall pay all worksite monitoring costs.

13 The worksite monitor shall have face-to-face contact with Respondent in the work  
14 environment on as frequent a basis as determined by the Board or its designee, but not less than  
15 once per week; interview other staff in the office regarding Respondent's behavior, if requested  
16 by the Board or its designee; and review Respondent's work attendance.

17 The worksite monitor shall verbally report any suspected substance abuse to the Board and  
18 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected  
19 substance abuse does not occur during the Board's normal business hours, the verbal report shall  
20 be made to the Board or its designee within one (1) hour of the next business day. A written  
21 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and  
22 any other information deemed important by the worksite monitor shall be submitted to the Board  
23 or its designee within 48 hours of the occurrence.

24 The worksite monitor shall complete and submit a written report monthly or as directed by  
25 the Board or its designee which shall include the following: (1) Respondent's name and  
26 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)  
27 the worksite monitor's license number, if applicable; (4) the location or location(s) of the  
28 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the

names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

10. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing

Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

11. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff privileges.

12. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING LICENSEES. Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

1 (2) Increase the frequency of biological fluid testing.

2 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or  
3 other action as determined by the Board or its designee.

4 B. If Respondent commits a minor violation of probation as defined by section 1361.52,  
5 subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or  
6 more of the following actions:

7 (1) Issue a cease-practice order;

8 (2) Order practice limitations;

9 (3) Order or increase supervision of Respondent;

10 (4) Order increased documentation;

11 (5) Issue a citation and fine, or a warning letter;

12 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in  
13 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of  
14 Regulations, at Respondent's expense;

15 (7) Take any other action as determined by the Board or its designee.

16 C. Nothing in this Decision shall be considered a limitation on the Board's authority to  
17 revoke Respondent's probation if he or she has violated any term or condition of probation. If  
18 Respondent violates probation in any respect, the Board, after giving Respondent notice and the  
19 opportunity to be heard, may revoke probation and carry out the disciplinary order that was  
20 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed  
21 against Respondent during probation, the Board shall have continuing jurisdiction until the matter  
22 is final, and the period of probation shall be extended until the matter is final.

23 13. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60  
24 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism  
25 program, that meets the requirements of Title 16, California Code of Regulations (CCR) section  
26 1358.1. Respondent shall participate in and successfully complete that program. Respondent  
27 shall provide any information and documents that the program may deem pertinent. Respondent  
28 shall successfully complete the classroom component of the program not later than six (6) months



1 after Respondent's initial enrollment, and the longitudinal component of the program not later  
2 than the time specified by the program, but no later than one (1) year after attending the  
3 classroom component. The professionalism program shall be at Respondent's expense and shall  
4 be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

5 A professionalism program taken after the acts that gave rise to the charges in the  
6 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
7 or its designee, be accepted towards the fulfillment of this condition if the program would have  
8 been approved by the Board or its designee had the program been taken after the effective date of  
9 this Decision.

10 Respondent shall submit a certification of successful completion to the Board or its  
11 designee not later than 15 calendar days after successfully completing the program or not later  
12 than 15 calendar days after the effective date of the Decision, whichever is later.

13 14. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this  
14 Decision, Respondent shall submit to the Board or its designee for prior approval the name and  
15 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who  
16 has a doctoral degree in psychology and at least five years of postgraduate experience in the  
17 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall  
18 undergo and continue psychotherapy treatment, including any modifications to the frequency of  
19 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

20 The psychotherapist shall consider any information provided by the Board or its designee  
21 and any other information the psychotherapist deems relevant and shall furnish a written  
22 evaluation report to the Board or its designee. Respondent shall cooperate in providing the  
23 psychotherapist with any information and documents that the psychotherapist may deem  
24 pertinent.

25 Respondent shall have the treating psychotherapist submit quarterly status reports to the  
26 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric  
27 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of  
28 probation, Respondent is found to be mentally unfit to resume the practice of medicine without

1 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the  
2 period of probation shall be extended until the Board determines that Respondent is mentally fit  
3 to resume the practice of medicine without restrictions.

4 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

5 15. SOLO PRACTICE PROHIBITION. Respondent is prohibited from  
6 engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to,  
7 a practice where: 1) Respondent merely shares office space with another physician but is not  
8 affiliated for purposes of providing patient care, or 2) Respondent is the sole physician  
9 practitioner at that location.

10 If Respondent fails to establish a practice with another physician or secure employment in  
11 an appropriate practice setting within 60 calendar days of the effective date of this Decision,  
12 Respondent shall receive a notification from the Board or its designee to cease the practice of  
13 medicine within three (3) calendar days after being so notified. The Respondent shall not resume  
14 practice until an appropriate practice setting is established.

15 If, during the course of the probation, the Respondent's practice setting changes and the  
16 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent  
17 shall notify the Board or its designee within five (5) calendar days of the practice setting change.  
18 If Respondent fails to establish a practice with another physician or secure employment in an  
19 appropriate practice setting within 60 calendar days of the practice setting change, Respondent  
20 shall receive a notification from the Board or its designee to cease the practice of medicine within  
21 three (3) calendar days after being so notified. The Respondent shall not resume practice until an  
22 appropriate practice setting is established.

23 16. EDUCATION COURSE. Within 60 calendar days of the effective date of  
24 this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its  
25 designee for its prior approval educational program(s) or course(s) which shall not be less than 20  
26 hours per year, for each year of probation. The educational program(s) or course(s) shall be  
27 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified.  
28 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition

1 to the Continuing Medical Education (CME) requirements for renewal of licensure. Following  
2 the completion of each course, the Board or its designee may administer an examination to test  
3 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65  
4 hours of CME of which 20 hours were in satisfaction of this condition.

5 17. NOTIFICATION. Within seven (7) days of the effective date of this  
6 Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief  
7 of Staff or the Chief Executive Officer at every hospital where privileges or membership are  
8 extended to Respondent, at any other facility where Respondent engages in the practice of  
9 medicine, including all physician and locum tenens registries or other similar agencies, and to the  
10 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage  
11 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within  
12 15 calendar days.

13 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

14 18. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED  
15 PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician  
16 assistants and advanced practice nurses.

17 19. OBEY ALL LAWS. Respondent shall obey all federal, state and local  
18 laws, all rules governing the practice of medicine in California and remain in full compliance  
19 with any court ordered criminal probation, payments, and other orders.

20 20. QUARTERLY DECLARATIONS. Respondent shall submit quarterly  
21 declarations under penalty of perjury on forms provided by the Board, stating whether there has  
22 been compliance with all the conditions of probation.

23 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
24 of the preceding quarter.

25 21. GENERAL PROBATION REQUIREMENTS.

26 Compliance with Probation Unit

27 Respondent shall comply with the Board's probation unit.

28 Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

#### Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

#### License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

#### Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

22. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

23. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If

1 Respondent resides in California and is considered to be in non-practice, Respondent shall  
2 comply with all terms and conditions of probation. All time spent in an intensive training  
3 program which has been approved by the Board or its designee shall not be considered non-  
4 practice and does not relieve Respondent from complying with all the terms and conditions of  
5 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
6 on probation with the medical licensing authority of that state or jurisdiction shall not be  
7 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
8 period of non-practice.

9 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
10 months, Respondent shall successfully complete the Federation of State Medical Board's Special  
11 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
12 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
13 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

14 Respondent's period of non-practice while on probation shall not exceed two (2) years.

15 Periods of non-practice will not apply to the reduction of the probationary term.

16 Periods of non-practice for a Respondent residing outside of California will relieve  
17 Respondent of the responsibility to comply with the probationary terms and conditions with the  
18 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
19 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
20 Controlled Substances; and Biological Fluid Testing..

21 24. COMPLETION OF PROBATION. Respondent shall comply with all  
22 financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to  
23 the completion of probation. Upon successful completion of probation, Respondent's certificate  
24 shall be fully restored.

25 25. VIOLATION OF PROBATION. Failure to fully comply with any term or  
26 condition of probation is a violation of probation. If Respondent violates probation in any  
27 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke  
28 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to

1 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,  
2 the Board shall have continuing jurisdiction until the matter is final, and the period of probation  
3 shall be extended until the matter is final.

4           26.    LICENSE SURRENDER. Following the effective date of this Decision, if  
5 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
6 the terms and conditions of probation, Respondent may request to surrender his or her license.  
7 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
8 determining whether or not to grant the request, or to take any other action deemed appropriate  
9 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
10 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
11 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
12 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
13 application shall be treated as a petition for reinstatement of a revoked certificate.

14           27.    PROBATION MONITORING COSTS. Respondent shall pay the costs  
15 associated with probation monitoring each and every year of probation, as designated by the  
16 Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical  
17 Board of California and delivered to the Board or its designee no later than January 31 of each  
18 calendar year.

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**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Samuel F. Trussell. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

May 27, 2017   
BENJAMIN STUART WILBUR, M.D.  
Respondent

I have read and fully discussed with Respondent BENJAMIN STUART WILBUR, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

5-29-2017   
SAMUEL F. TRUSSELL,  
Attorney for Respondent

**ENDORSEMENT**

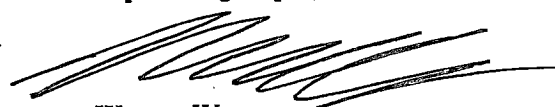
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

5/30/2017

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
E. A. JONES III  
Supervising Deputy Attorney General

  
WENDY WIDLUS  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**First Amended Accusation No. 800-2015-016182**



1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 EDWARD KIM  
Deputy Attorney General  
4 State Bar No. 195729  
California Department of Justice  
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7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Feb. 15 20 17  
BY [Signature] ANALYST

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation  
12 Against:

13 **BENJAMIN STUART WILBUR, M.D.**  
14 **12672 Limonite Avenue, Suite 3E-235**  
**Corona, CA 92880**

15 **Physician's and Surgeon's**  
**Certificate No. A-92956**

16 Respondent.

Case No. 800-2015-016182

OAH No.

**FIRST AMENDED**  
**ACCUSATION**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in  
21 her official capacity as the Executive Director of the Medical Board of California, Department of  
22 Consumer Affairs.

23 2. On or about September 30, 2005, the Medical Board of California issued Physician's  
24 and Surgeon's Certificate Number A-92956 to Benjamin Stuart Wilbur, M.D. (Respondent). The  
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on May 31, 2017, unless renewed.

27 **JURISDICTION**

28 3. This First Amended Accusation is brought before the Medical Board of California

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 2227 of the Code provides that a licensee who is found guilty under the  
4 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
5 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
6 action taken in relation to discipline as the Board deems proper.

7 5. Section 2234 of the Code, states:

8 "The board shall take action against any licensee who is charged with unprofessional  
9 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
10 limited to, the following:

11 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
12 violation of, or conspiring to violate any provision of this chapter.

13 "(b) Gross negligence.

14 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
15 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
16 the applicable standard of care shall constitute repeated negligent acts.

17 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate  
18 for that negligent diagnosis of the patient shall constitute a single negligent act.

19 "(2) When the standard of care requires a change in the diagnosis, act, or omission that  
20 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
21 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
22 applicable standard of care, each departure constitutes a separate and distinct breach of the  
23 standard of care.

24 "(d) Incompetence.

25 "(e) The commission of any act involving dishonesty or corruption which is substantially  
26 related to the qualifications, functions, or duties of a physician and surgeon.

27 "(f) Any action or conduct which would have warranted the denial of a certificate.

28 "(g) The practice of medicine from this state into another state or country without meeting

1 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
2 apply to this subdivision. This subdivision shall become operative upon the implementation of the  
3 proposed registration program described in Section 2052.5.

4 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
5 participate in an interview by the board. This subdivision shall only apply to a certificate holder  
6 who is the subject of an investigation by the board.”

7 6. Section 2236 of the Code states:

8 “(a) The conviction of any offense substantially related to the qualifications, functions, or  
9 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this  
10 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive  
11 evidence only of the fact that the conviction occurred.

12 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the  
13 Division of Medical Quality<sup>1</sup> of the pendency of an action against a licensee charging a felony  
14 or misdemeanor immediately upon obtaining information that the defendant is a licensee. The  
15 notice shall identify the licensee and describe the crimes charged and the facts alleged. The  
16 prosecuting agency shall also notify the clerk of the court in which the action is pending that the  
17 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds  
18 a license as a physician and surgeon.

19 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours  
20 after the conviction, transmit a certified copy of the record of conviction to the board. The  
21 division may inquire into the circumstances surrounding the commission of a crime in order to fix  
22 the degree of discipline or to determine if the conviction is of an offense substantially related to  
23 the qualifications, functions, or duties of a physician and surgeon.

24 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to  
25 be a conviction within the meaning of this section and Section 2236.1. The record of conviction  
26 shall be conclusive evidence of the fact that the conviction occurred.”

27 <sup>1</sup> Pursuant to Business and Professions Code section 2002, “Division of Medical Quality”  
28 or “Division” shall be deemed to refer to the Medical Board of California.

1       7.     Section 2239 of the Code states:

2       “(a) The use or prescribing for or administering to himself or herself, of any controlled  
3 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
4 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
5 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
6 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
7 consumption, or self-administration of any of the substances referred to in this section, or any  
8 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
9 conclusive evidence of such unprofessional conduct.

10       “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
11 deemed to be a conviction within the meaning of this section. The Division of Medical Quality  
12 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing  
13 may order the denial of the license when the time for appeal has elapsed or the judgment of  
14 conviction has been affirmed on appeal or when an order granting probation is made suspending  
15 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
16 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of  
17 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
18 information, or indictment.”

19       8.     Section 822 of the Code, states:

20       “If a licensing agency determines that its licentiate's ability to practice his or her profession  
21 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the  
22 licensing agency may take action by any one of the following methods:

23       “(a) Revoking the licentiate's certificate or license.

24       “(b) Suspending the licentiate's right to practice.

25       “(c) Placing the licentiate on probation.

26       “(d) Taking such other action in relation to the licentiate as the licensing agency in its  
27 discretion deems proper.

28       “The licensing agency shall not reinstate a revoked or suspended certificate or license until

1 it has received competent evidence of the absence or control of the condition which caused its  
2 action and until it is satisfied that with due regard for the public health and safety the person's  
3 right to practice his or her profession may be safely reinstated."

4 9. Section 2238 of the Code states:

5 "A violation of any federal statute or federal regulation or any of the statutes or regulations  
6 of this state regulating dangerous drugs or controlled substances constitutes unprofessional  
7 conduct."

8 10. Section 490 of the Code states, in pertinent part:

9 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
10 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
12 or profession for which the license was issued.

13 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
14 discipline a licensee for conviction of a crime that is independent of the authority granted under  
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
16 of the business or profession for which the licensee's license was issued.

17 "..."

18 11. Section 11170 of the Health and Safety Code states:

19 "No person shall prescribe, administer, or furnish a controlled substance for himself."

20 12. Section 11370.1. of the Health and Safety Code states:

21 "(a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person  
22 who unlawfully possesses any amount of a substance containing cocaine base, a substance  
23 containing cocaine, a substance containing heroin, a substance containing methamphetamine, a  
24 crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant  
25 material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while  
26 armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the  
27 state prison for two, three, or four years. As used in this subdivision, "armed with" means having  
28 available for immediate offensive or defensive use.

1       “(b) Any person who is convicted under this section shall be ineligible for diversion or  
2 deferred entry of judgment under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part  
3 2 of the Penal Code.”

4       13. California Code of Regulations, title 16, section 1360, states:

5       “For the purposes of denial, suspension or revocation of a license, certificate or permit  
6 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be  
7 considered to be substantially related to the qualifications, functions or duties of a person holding  
8 a license, certificate or permit under the Medical Practice Act if to a substantial degree it  
9 evidences present or potential unfitness of a person holding a license, certificate or permit to  
10 perform the functions authorized by the license, certificate or permit in a manner consistent with  
11 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the  
12 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
13 violation of, or conspiring to violate any provision of the Medical Practice Act.”

#### 14                                   **FACTUAL ALLEGATIONS**

##### 15                                   **August 2015 Arrest**

16       14. On or about August 7, 2015, Respondent drove a 2014 black Hyundai Sonata in the  
17 area of Foothill Blvd. and Baker Ave. where an Automatic License Plate Reader identified the  
18 vehicle. Upland Police Officers responded and searched the vehicle. During the search, the  
19 officers discovered several illicit items, including:

- 20       • a Ziploc style bag with a white crystal substance (identified as methamphetamine);
- 21       • a loaded Ruger .357 pistol (subsequently determined to be stolen);
- 22       • a speed loader;
- 23       • additional hollow point .357 ammunition;
- 24       • two plastic bags containing marijuana;
- 25       • 16 empty 2” x 2” plastic baggies;
- 26       • two digital scales;
- 27       • one lighter.

28       At the time of his arrest, Respondent admitted that “he uses some of [the methamphetamines] and

1 gives some of it to others.”

2 15. On or about October 9, 2015, in San Bernardino County Superior Court in case  
3 number FWV1503800, entitled *People vs. Benjamin Wilbur*, Respondent was charged with three  
4 felony counts (violations of Health and Safety Code sections 11379, subdivision (a), 11378 and  
5 11359) in a criminal complaint.

6 16. On or about October 13, 2015, in San Bernardino County Superior Court in case  
7 number FWV1503800, entitled *People vs. Benjamin Wilbur*, Respondent appeared at Superior  
8 Court and was served with a Notice of Appearance and Application for a Restriction on  
9 Respondent and accompanying papers pursuant to Penal Code section 23.

#### 10 **October 2015 Arrest**

11 17. Respondent was arrested again on or about October, 13, 2015 – the same day as his  
12 appearance on his criminal matter. The facts and circumstances of his arrest are as follows:

13 18. Police officers of the Fontana Police Department whose responsibility was to  
14 investigate narcotic related crimes responded to 2025 E. Convention Center Way in the City of  
15 Ontario (Residence Inn) and conducted a traffic stop on the vehicle of a person who left a motel  
16 room. The male driving the vehicle, M.S., was found to be in possession of over six ounces of  
17 methamphetamine, over 100 oxycodone pills, and a loaded firearm. M.S. gave officers verbal  
18 consent to search his room which was rented under his name. As the officers spoke to two male  
19 individuals in the room, they heard a running shower in the bathroom upstairs. A third male was  
20 contacted as he exited the shower and identified as Respondent, who stated that the motel was not  
21 in his name but he had resided in the motel during the past few days with M.S. Respondent gave  
22 verbal, and later written, consent to search the motel room. Respondent identified his living area  
23 as the upstairs bedroom and bathroom. He said everything that was in that area belonged to him  
24 and everything in the other bedroom belonged to M.S.

25 19. During a search of the upstairs portion of the motel, a brown colored travel bag was  
26 located in the bathroom. In the bag was a box containing a 50 ml vile of Marcaine (also known as  
27 bupivacaine hydrochloride, an anesthetic (numbing medicine) used as a local anesthetic for a  
28 spinal block); a box containing 5 viles of 10 mg Lidocaine HCl (also known as xylocaine) and

1 lignocaine (a medication used to numb tissue in a specific area and to treat ventricular  
2 tachycardia); and a 40 mg vile of Depro-Medrol (an anti-inflammatory glucocorticoid for  
3 intramuscular, intra-articular, soft tissue or intralesional injection). On the floor next to the bed  
4 was an orange colored pill bottle (with the patient name, M.S.) and the prescription was for 120  
5 30 mg Oxycodone pills (a controlled opioid pain medication), with 106 pills inside of the  
6 container. Hidden inside of the box for Lidocaine was a 10 ml vile with "360" written on the top  
7 in marker and "Tri-Testbolone 360" on the label. The vile was labeled as containing a blend of  
8 Testosterone Enanthate, Testosterone Propionate and Trenbolone Acetate. All the ingredients in  
9 this vile were anabolic steroids and controlled substances which were widely sold on the black  
10 market for performance enhancing. In Respondent's bedroom was a black colored computer bag  
11 next to his bed. Inside of the bag were two clipboards which had prescriptions attached to them.  
12 Behind the prescriptions were forms relating to pain assessment and pain management. The  
13 doctor's name on the prescriptions was Respondent's own name. In the side pocket of the bag  
14 was court paperwork listing Respondent as the defendant in a criminal case in San Bernardino  
15 County, case number FWV1503800. In the last pocket of Respondent's bag were three hand  
16 written pieces of paper. One piece of paper had the price of Norco and Xanax as \$3 each and the  
17 price for somas as \$1 each. Each list had the amount multiplied by 120. The second piece of  
18 paper was yellow and was an accounts receivable ledger. The ledger had five names on it and  
19 under the column "Charges" had either 300 or 150. On a white notepad from the Residence Inn  
20 were five names with four having "\$300" next to it and two of those having "Paid" written next to  
21 it.

22 20. During the arrest, Respondent also made the following statement to the police.  
23 Respondent was a friend of M.S. who was also a patient of his for the past two years. Respondent  
24 treated M.S. for his chronic pain and had prescribed oxycodone and Norco. Respondent had been  
25 staying with M.S. the past few days because he did not have anywhere else to go. Respondent  
26 admitted to the possession of the steroids and stated that he did not have a valid prescription for  
27 the steroids and that they were not given to him by a licensed doctor. Respondent stated that  
28 instead of paying for the steroids he obtained illegally, he provided a "consultation" and script for



1 pain medications in exchange. Respondent also explained his consultation practice. He stated  
2 that he charged all new patients \$300 per consultation, and each patient who returned and did not  
3 have severe chronic pain was charged \$150 for follow-up visits and the patients who did have  
4 severe chronic pain were charged \$300. Respondent admitted that he never took x-rays or did  
5 any type of physical examinations, and that he would write prescriptions for large amounts of  
6 pain medications based on a verbal assessment.

7 21. Throughout his interaction with the police officers, Respondent appeared to be under  
8 the influence of narcotics and Respondent admitted to using methamphetamine and marijuana the  
9 previous night and stated that he had a valid medical marijuana recommendation. However, the  
10 police officers were unable to locate the medical marijuana recommendation to verify this claim.  
11 Respondent's demeanor appeared to change several times, going from very docile to excited and  
12 from not saying anything to speaking very rapidly. He also would drift off into deep thought and  
13 began to believe he was being set up by everybody.

#### 14 **January 2016 Conviction**

15 22. On or about October 15, 2015, in San Bernardino County Superior Court in case  
16 number FWV1503874, entitled *People vs. Benjamin Wilbur*, Respondent was charged with two  
17 felony counts for selling, furnishing, administering, giving away, transporting or importing a  
18 controlled substance in violation of Health and Safety Code section 11352, subdivision (a), and  
19 section 11379, subdivision (a). Suspect M.S. was also charged with multiple felony counts of  
20 drug related crimes.

21 23. On or about October 21, 2015, in San Bernardino County Superior Court in case  
22 number FWV1503800, entitled *People vs. Benjamin Wilbur*, the court signed an order ordering  
23 Respondent to cease and desist from practicing medicine during the pendency of his criminal  
24 action.

25 24. On or about January 13, 2016, the complaint was amended to add a violation of  
26 Health and Safety Code section 11370.1, subdivision (a), a felony (Count 4)[unlawful possession  
27 of a controlled substance], and Respondent was convicted, upon his plea of nolo contendere, of  
28 violating Count 4. The remaining charges were dismissed and in addition, as part of this plea

1 arrangement, the two counts felony charges against Respondent in case number FWV1503874  
2 were also dismissed.

3 25. On or about January 13, 2016, in San Bernardino County Superior Court in case  
4 number FWV1503800 Respondent was sentenced to serve 279 days in a San Bernardino County  
5 Jail Facility, and to a period of 36 months of probation, with terms and conditions, including,  
6 among other things, that Respondent report to a rehabilitation center, violate no law, report to a  
7 probation officer, neither possess nor control any dangerous or deadly weapons, attend AA  
8 meetings as directed, and pay fines and fees.

9 **March 2016 Interview**

10 26. On or about March 10, 2016, an investigator with the Department of Consumer  
11 Affairs interviewed Respondent. Initially he denied having ever used illicit drugs. Later, when  
12 confronted however, he admitted to having repeatedly used methamphetamines in 2015.

13 **April 2016 Interim Suspension Order**

14 27. On or about April 1, 2016, an interim suspension order was issued restricting  
15 Respondent from practicing medicine during the pendency of this action.

16 **May 2016 Conviction**

17 28. On or about May 18, 2016, in the Superior Court of the State of California, for the  
18 County of Riverside case number R1F1502537, entitled *People of the State of California vs.*  
19 *Benjamin Stuart Wilbur*, Respondent was convicted, upon his plea of guilty to a violation of  
20 Vehicle Code section 10851, subdivision (a), a misdemeanor.

21 29. Respondent was sentenced to summary probation for a period of 36 months, with  
22 terms and conditions which included, without limitation, payment of fines and restitution.

23 30. The circumstances surrounding Respondent's conviction are as follows:

24 31. On or about July 8, 2015, Respondent rented a black Ford Fusion (the "Rental Car")  
25 from Budget Auto Rental and was required to return the Rental Car to the rental agency on or  
26 about July 15, 2015. However, Respondent never returned the Rental Car to Budget Auto Rental.  
27 On or about September 24, 2015, at approximately 10:30 a.m., police officers had located the  
28 Rental Car in the parking lot of the courthouse located at 8303 Haven Avenue in Rancho

1 Cucamonga, California. Respondent was detained by police officers when he approached the  
2 Rental Car. He waived his Miranda rights and spoke to the officers at that time telling them that  
3 he rented the Rental Car and was required to return it on July 15, 2015. He stated that he did not  
4 return the car when it was due and assumed his credit card would be charged for the additional  
5 time. Respondent also said that while he did receive certified letters from Budget Auto Rental, he  
6 never opened them. He also stated that he was living out of the vehicle and motels due to his  
7 recent arrest and divorce. He also admitted to using methamphetamines. He later stated that he  
8 may have cancelled his credit card which was why Budget was not able to charge against it.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Alcohol and Self Use of Controlled Substance)**

11 32. Respondent is subject to disciplinary action under section 2239 of the Code, in that he  
12 used, prescribed, or administered to himself a controlled substance and/or alcoholic beverages, to  
13 the extent, or in such a manner as to be dangerous or injurious to himself, or to any other person  
14 or to the public, and/or to an extent that such use impaired his ability to practice medicine safely.  
15 The circumstances are as follows:

16 33. The allegations in paragraphs 14 through 31, inclusive above are incorporated herein  
17 by reference as if fully set forth.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Conviction of Substantially Related Crimes)**

20 34. Respondent is subject to disciplinary action under sections 2236 and 490, of the  
21 Code, in that he was convicted of offenses substantially related to the qualifications, functions, or  
22 duties of a physician and surgeon. The circumstances are as follows:

23 35. The allegations of the First Cause for Discipline are incorporated herein by reference  
24 as if fully set forth.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Violation of Drug Statute)**

27 36. Respondent is subject to disciplinary action under section 2238 of the Code and  
28 sections 11170 and 11370.1 of the Health and Safety Code in that Respondent administered a

1 controlled substance to himself and unlawfully possessed a controlled substance while armed  
2 with a firearm. The circumstances are as follows:

3 37. The allegations of the First and Second Causes for Discipline are incorporated herein  
4 by reference as if fully set forth.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Unable to Practice Safely Due to Mental Disorder)**

7 38. Respondent is subject to discipline pursuant to Business and Professions Code section  
8 822 in that his ability to practice medicine safely is impaired because he is mentally or physically  
9 ill in a manner affecting competency. The circumstances of Respondent's mental illness are as  
10 follows:

11 39. The allegations of the First, Second and Third Causes for Discipline are incorporated  
12 herein by reference as if fully set forth.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(General Unprofessional Conduct)**

15 40. Respondent is subject to disciplinary action under section 2234 of the Code,  
16 generally, in that he committed unprofessional conduct. The circumstances are as follows:

17 41. The allegations of the First, Second, Third and Fourth Causes for Discipline are  
18 incorporated herein by reference as if fully set forth.

19 ///

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Medical Board of California issue a decision:

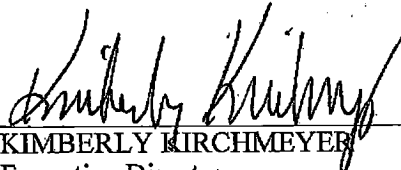
4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A-92956,  
5 issued to Benjamin Stuart Wilbur, M.D.;

6 2. Revoking, suspending or denying approval of Benjamin Stuart Wilbur, M.D.'s  
7 authority to supervise physician assistants, pursuant to section 3527 of the Code;

8 3. Ordering Benjamin Stuart Wilbur, M.D. to pay the Medical Board of California, if  
9 placed on probation, the costs of probation monitoring; and

10 4. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: \_\_\_\_\_

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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